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Mohd Hafiz bin Mohamad v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO T-05(M)-399–09 OF 2019
HADHARIAH SYED ISMAIL, AZMAN ABDULLAH AND AZIZUL AZMI ADNAN JJCA
7 FEBRUARY 2024

C

Criminal Procedure — Appeal — Appeal against sentence — Whether facts of case did not warrant imposition of death penalty — Whether sentence of 35 years' jail plus 12 strokes of whipping was appropriate — Court's discretion under Abolition of Mandatory Death Penalty Act 2023

D

The appellant was sentenced to death by the High Court after it found him guilty on a charge of committing murder. In his instant appeal, the appellant withdrew his appeal against his conviction and only pleaded for his sentence to be reduced to imprisonment plus whipping as provided under the Abolition of
E Mandatory Death Penalty Act 2023. The trial court had found that the appellant had caused a man's death by stabbing him several times in the chest with a knife in the parking lot of the district religious affairs department in Kuala Terengganu after the two of them had had an argument. The appellant, the deceased, the latter's sister (with whom the appellant had a 'special
F relationship') and her family members had earlier gone to the said department to check on the appellant's marital status. The appellant had gone to the department with his friend ('SP21') in the latter's car and had brought with him the knife concealed in a paper bag which he had left on the floorboard of the car.

G

Held, affirming the conviction, allowing the appeal against sentence and replacing the death sentence with a sentence of 35 years' jail and 12 strokes of whipping:

H

(1) After considering the facts of the case by the prosecution and the defence put forward by the appellant, the court was of the considered view that the circumstances of the instant case did not warrant the imposition of the death penalty and that in its place, a sentence of 35 years' jail together with 12 strokes of whipping was appropriate (see paras 17 & 19).

I

(2) Even though the deceased suffered multiple stab wounds to the chest, SP21' s evidence stated that there was a quarrel between the appellant and the deceased before the stabbing. This negated the element of premeditated murder although the appellant had brought the knife with him, but the knife was left in the car. There was no evidence that the

appellant had used any force to bring the deceased near the car. The court believed that the appellant was about to leave the place when the unfortunate event happened (see para 18).

[Bahasa Malaysia summary

Perayu telah dijatuhkan hukuman mati oleh Mahkamah Tinggi selepas mendapati dia bersalah atas satu pertuduhan bunuh. Dalam rayuan ini, perayu menarik balik rayuannya terhadap sabitannya dan hanya memohon agar hukumannya dikurangkan kepada penjara serta sebat seperti yang diperuntukkan di bawah Akta Pemansuhan Hukuman Mati Mandatori 2023. Mahkamah perbicaraan mendapati perayu telah menyebabkan kematian seorang lelaki dengan menikamnya beberapa kali di dada dengan pisau di tempat letak kereta jabatan hal ehwal agama daerah di Kuala Terengganu selepas kedua-dua mereka bertengkar. Perayu, si mati dan adik perempuannya (perayu mempunyai 'hubungan sulit' dengannya) dan ahli keluarganya sebelum ini telah pergi ke jabatan tersebut untuk memeriksa status perkahwinan perayu. Perayu telah pergi ke jabatan itu bersama rakannya ('SP21') di dalam kereta si mati dan telah membawa bersama pisau yang disembunyikan di dalam beg kertas yang ditinggalkan di lantai kereta.

Diputuskan, mengekalkan sabitan, membenarkan rayuan terhadap hukuman dan menggantikan hukuman mati dengan penjara selama 35 tahun dan 12 sebatan:

(1) Selepas mempertimbangkan fakta kes oleh pihak pendakwaan dan pembelaan yang dikemukakan oleh perayu, mahkamah berpendapat bahawa keadaan kes ini tidak menjamin hukuman mati dan untuk menggantikannya, hukuman penjara 35 tahun bersama 12 sebatan adalah sesuai (lihat perenggan 17 & 19).

(2) Walaupun si mati mempunyai beberapa luka tikaman di dada, keterangan SP21 menyatakan bahawa terdapat pertengkaran antara perayu dan si mati tikaman tersebut berlaku. Hal ini menafikan unsur pembunuhan yang dirancang walaupun perayu telah membawa pisau bersamanya, namun pisau ditinggalkan di dalam kereta. Tiada keterangan yang menunjukkan bahawa perayu telah menggunakan sebarang paksaan untuk membawa si mati berhampiran kereta. Mahkamah berpendapat bahawa perayu hampir meninggalkan tempat itu namun kejadian malang itu telah berlaku (lihat perenggan 18).]

Cases referred to

Alowonle Oluwajuwon Gilbert v PP [2023] MLJU 2628, CA (refd)
Packer v Packer [1953] 2 All ER 127, CA (refd)

Legislation referred to

Abolition of Mandatory Death Penalty Act 2023
Penal Code s 302

Appeal from: *Pendakwa Raya lwn Mohd Hafiz bin Mohamad* [2019] MLJU 2129 (High Court, Kuala Terengganu)

Mazlan bin Md Zain (Mohd Yusof Endut & Assoc) for the appellant.
Atiqah bt Abdul Karim @ Husaini (Attorney General's Chambers) for the respondent.

Azman Abdullah JCA:

INTRODUCTION

[1] This is an appeal by Mohd Hafiz bin Mohamad ('the appellant' or 'the accused') against the decision of the High Court which found that the appellant was guilty of the charge and convicted under s 302 of the Penal Code and the appellant was sentenced to death.

[2] At the beginning, the appellant filed appeal on conviction and sentence to this court. However, at the hearing on 12 October 2023, the appellant withdrew the appeal on conviction. We therefore struck out the appellant appeal on conviction and upheld the conviction by the High Court. We then proceeded to hear the appellant appeal on the sentence.

[3] After reading the written submissions filed, hearing both parties orally and perusing the records of appeal, we unanimously allowed the appeal on sentence. We applied our discretion provided under the Abolition of Mandatory Death Penalty Act 2023 (Act 846) which conferred on this court the discretion to impose either the sentence of death or sentence of imprisonment of not less than 30 years and not more than 40 years. We imposed 35 years imprisonment to the appellant with 12 strokes of whipping.

THE PROSECUTION CASE

[4] The charge against the appellant reads as follows:

> Bahawa kamu pada 16 Oktober 2016, jam lebih kurang 11.39 pagi, bertempat di parkir hadapan Pejabat Agama Daerah Kuala Terengganu, Kompleks Seri Iman, di dalam Daerah Kuala Terengganu, di dalam Negeri Terengganu Darul Iman, telah melakukan bunuh dengan menyebabkan kematian terhadap Muhamad Shukri bin Husin (No K/P: 820918–03–6159) dan oleh yang demikian kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan

[5] The learned High Court judge ('HCJ') had outlined the material facts of prosecution case in his grounds of judgment which we respectfully adopt them with modification whenever necessary. The relevant facts, as found by the learned HCJ, was that the appellant had killed the deceased who was the brother of SP18. The appellant was said to have special relationship with SP18.

[6] On the 16 October 2016, the appellant together with SP18 and her family members including the deceased and SP17 went to the religious office at the Kompleks Seri Iman Kuala Terengganu to check on the appellant marital status. The religious office confirmed that the appellant was a married man since 2010.

[7] At the parking lot, SP18 and SP17 saw from 30 metres that the appellant stabbed the deceased with a butcher knife. The facts showed that the appellant went to the religious office with his friend, SP21. According to SP21, the appellant brought a paper bag together with him when they left for the religious office. The paper bag was placed at the foot of the front passenger seat.

[8] SP21 only became aware of the knife when the appellant was about to use the knife to stab the deceased after taking it from the paper bag. SP21 tried to stop the appellant but failed as the appellant was stronger than him.

[9] After the killing, the appellant met SP19 and told him about the incident. The appellant then asked SP19 to keep the knife. On 18 October 2016, SP19 handed over the knife to the police.

[10] SP13 raided the appellant house and seized the appellant clothes, namely the shirt and trousers worn on the day of the incident. The clothes were sent to the Malaysian Chemistry Department for analysis and it was found that there were blood stains on the pants which contained the deceased's DNA.

[11] The appellant was arrested approximately three days after the incident which was on 19 October 2016.

[12] The results of the autopsy conducted by SP16 on the deceased disclosed that the cause of death was the stab wounds to the chest. SP16 found five stab wounds, two slash wounds and six incision wounds inflicted on the deceased. The wounds suffered are very severe, that is, the main blood vessels of the heart and respiratory tract were cut.

[13] As the appeal on conviction was withdrawn, we will not discuss the findings of the learned HCJ at the end of prosecution case and at the end of the

defence case. We will now direct our grounds to the issue on sentence in which we commute from the sentence of death penalty to the sentence of imprisonment.

SENTENCE

[14] The abolition of death penalty is still new in the Malaysian hemisphere. Hitherto, the issue on whether to mete the sentence of hanging to death out or to sentence for imprisonment still remain unsettled. However, we cannot resist the changes. Lord Denning LJ in a locus classicus case of *Packer v Packer* [1953] 2 All ER 127 stated that 'If we never do anything which has not heen done before, we shall never get anywhere. The law will stand still while the rest of the world goes on, and that will be bad for both'.

[15] All in all, it is the duty of the court to have regard to justice. In considering what is the appropriate sentence to be passed, we do consider all the necessaries. We have examined whether there is a prospect for not imposing the death penalty and to what extent should we consider the accused rights of life. We have considered the seriousness of the offence committed and element of intention with lethal or other extreme factors.

[16] We appreciate the decision of Justice Vazeer Alam Mydin Meera JCA in the case of *Alowonle Oluwajuwon Gilbert v Public Prosecutor* [2023] MLJU 2628 when he summed up on when to impose the sentence of death as follows:

> It can be gleaned from the cases discussed in the preceding paragraphs that the sentence of death has been imposed where the murders committed were extremely savage, heinous, diabolical, gruesome, cruel, horrendous or brutal and which shocks not only the judicial conscience but even the collective conscience of the society. As a broad guideline, it is our view, that the death penalty would be justified in dealing with, among others, hired and serial killers, those who rape and kill their victims for purposes of sexual gratification, dismember the bodies of their victims, dangerous criminals who use firearms, and those who plan a murder and execute it in a cold-blooded manner.

[17] Therefore, after considering the facts of the case by the prosecution and the defence put forward by the appellant, we were of the considered view that the circumstances of the present case did not warrant the imposition of the death penalty.

[18] In this present appeal, even though the deceased suffered multiple stab wounds to the chest, evidence from SP21 stated that there was a quarrel between the appellant and the deceased before the appellant took the knife and stabbed the deceased. This negated the element of premeditated murder although the appellant brought with him a knife, but the knife was placed in

the car. There was no evidence that the appellant had used any force to bring the deceased near the car. We believe, that the appellant was about to leave the place when this unfortunate event happened.

CONCLUSION

[19] In the upshot, we allowed the appeal on sentence. The conviction by the High Court was affirmed but the sentence of death by hanging was set aside. It was our unanimous decision that a sentence of imprisonment of 35 years together with 12 strokes of whipping would be appropriate.

Appeal allowed and death sentence by hanging set aside.

Reported by Ashok Kumar